

## Appendix F: Participant Rights

### Appendix F-1: Opportunity to Request a Fair Hearing

The State provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified in Item 1-F of the request; (b) are denied the service(s) of their choice or the provider(s) of their choice; or, (c) whose services are denied, suspended, reduced or terminated. The State provides notice of action as required in 42 CFR §431.210.

**Procedures for Offering Opportunity to Request a Fair Hearing.** Describe how the individual (or his/her legal representative) is informed of the opportunity to request a fair hearing under 42 CFR Part 431, Subpart E. Specify the notice(s) that are used to offer individuals the opportunity to request a Fair Hearing. State laws, regulations, policies and notices referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The DDA informs the individual and his/her family or his/her legal representative of the opportunity to request a Medicaid Fair Hearing by providing a written explanation of the right to appeal certain adverse decisions made by the DDA. The types of decisions or actions of the DDA for which there is a right to a Medicaid Fair Hearing are described in 42 CFR § 431.220; Maryland Annotated Code Health-General Article § 7-406; and COMAR 10.01.04. Specifically, an individual will have an opportunity for a Medicaid Fair Hearing if he or she brings a claim that: (1) his or her application for eligibility for this waiver was denied; (2) he or she disputes DDA's determination of his or her priority on the waiting list; (3) DDA did not provide a determination on his or her application within 60 days from the date of application; (4) his or her request for services has been erroneously denied or not acted upon with reasonable promptness; or (5) DDA or Medicaid acted erroneously. COMAR 10.01.04.02.

Upon making a decision affecting an individual's entitlement to receive services, the DDA provides a written letter notifying the individual of its adverse decision (*e.g.*, denial of eligibility, determination of Waiting List priority, denial of request for services, etc. as provided above), including *Notice: Medicaid Fair Hearing Rights*, as further described below. A copy of the final, signed notice is retained in the individual's file at the DDA Regional Office.

To ensure the individual is informed of his or her rights, this letter is mailed to the individual's address of record, and, if applicable, his/her family or his/her legal representative, and specifies: (1) the DDA's decision, (2) the basis of the DDA's decision; (3) a description of how to submit additional information for reconsideration; (4) an explanation of the individual's right to appeal the decision by requesting a Medicaid Fair Hearing ("an appeal") as explained in an enclosed notice; and (5) his or her right to continue to receive services pending the appeal. The Coordinator of Community Services (CCS) and the authorized representative are copied on this letter to the individual. This letter is designed to be very understandable so that individuals and their families have a full understanding of their rights.

The two-page notice that is enclosed with the DDA's decision letter is entitled, *Notice: Medicaid Fair Hearing Rights* and describes: (1) how to request a hearing; (2) the timeframe within which the hearing must be requested (90 days plus 4 day grace period allowed for mail to be received); (3) what

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a Medicaid Fair Hearing is; (4) that the individual may represent himself or herself or use legal counsel or appoint an Authorized Representative; and (5) how to settle some (or all) of the issues in the appeal without having to go to hearing, including the option of a Case Resolution Conference as described in Appendix F-2 below. Also attached to the letter is a pre-addressed *Hearing Request Form* that the individual can use to request a Medicaid Fair Hearing to contest the decision by the DDA.

If an individual requires assistance in pursuing a Medicaid Fair Hearing, his or her CCS will assist. Per DDA's policy, a CCS can provide the following assistance to an individual in the appeal process: (1) explain the appeal process to an individual, family, guardian, or authorized representative; (2) assist with the completion of the required forms for appealing a DDA determination; and (3) assist the individual in completing and sending a request for reconsideration. A CCS cannot provide legal advice or assist in preparing for, facilitate, or represent the individual in a Medicaid Fair Hearing.

## Appendix F-2: Additional Dispute Resolution Process

- a. **Availability of Additional Dispute Resolution Process.** Indicate whether the State operates another dispute resolution process that offers participants the opportunity to appeal decisions that adversely affect their services while preserving their right to a Fair Hearing. *Select one:*

<input type="radio"/>	No. This Appendix does not apply
<input checked="" type="radio"/>	Yes. The State operates an additional dispute resolution process

- b. **Description of Additional Dispute Resolution Process.** Describe the additional dispute resolution process, including: (a) the State agency that operates the process; (b) the nature of the process (i.e., procedures and timeframes), including the types of disputes addressed through the process; and, (c) how the right to a Medicaid Fair Hearing is preserved when a participant elects to make use of the process: State laws, regulations, and policies referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The DDA also offers a dispute resolution process called a Case Resolution Conference (CRC), where the participant, his/her family (if applicable), and the DDA engage in discussions surrounding the DDA decision or action in question. A CRC is offered for any type of dispute for which an individual may request a Medicaid Fair Hearing (see Appendix F-1). A CRC provides an opportunity for a participant, his/her family, and representatives from the DDA to resolve a dispute before a participant's Medicaid Fair Hearing. Only one CRC is available per matter for which a Medicaid Fair Hearing is requested. The individual is informed that a CRC is not required prior to or as a substitute for a Medicaid Fair Hearing.

Not all issues can be resolved in the CRC process. If there is partial agreement, that agreement will be recorded and, if the case goes to the Medicaid Fair Hearing, only the remaining issues will be decided by the Office of Administrative Hearing (OAH). If there is no agreement, the participant and his/her family may proceed to a Medicaid Fair Hearing.

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All participants and their families are informed of the opportunity to engage in the CRC process when they receive the letter from DDA informing them of an adverse action pertaining to waiver services, for which the participant may request a Medicaid Fair Hearing, as described in Appendix F-1 above. As noted in Appendix F-1 above, the *Hearing Request Form* permits the individual to request a CRC in addition to a Medicaid Fair Hearing. If the participant selects it, the DDA schedules the CRC prior to the Medicaid Fair Hearing.

Attached to the letter from DDA are two documents, *Notice: Medicaid Fair Hearing Rights* and a *Hearing Request Form*. In addition to describing the Medicaid Fair Hearing process, the *Notice: Medicaid Fair Hearing Rights* describes the CRC process and informs the participant of her/his opportunity to request a CRC. The *Hearing Request Form* includes a box to check if the participant wants to have a CRC as well as a Medicaid Fair Hearing.

### **CRC Discussion**

The CRC is a forum in which the parties engage in discussion in order to reach some resolution as to the underlying matter. The following are potential areas of discussion:

- a. The positions of the participant and the DDA, and the bases for them;
- b. Whether the information submitted is sufficient for the DDA to make a determination on the request; and
- c. Whether the participant and the DDA are correctly interpreting and applying statutes, regulations, and policies to the facts presented.

### **CRC Structure & Processes**

The CRC typically lasts approximately one (1) hour and the overall structure of the CRC is as follows:

- a. The moderator, a staff member of DDA not involved in the initial decision, introduces himself/herself and explains the process.
- b. The participant and his/her family have 10 minutes to explain the request, and why he or she thinks it should be granted.
- c. The DDA Regional Office representative has 10 minutes to explain why the request was denied.
- d. If the moderator thinks that the facts are not clear, or are misunderstood, he or she may ask that the parties discuss the facts at that time, so that everyone is working with the same set of facts. If this discussion resolves some or all of the disputes, the moderator reflects back the participants' areas of agreement and documents them.
- e. If there are disputes still remaining, the moderator may meet separately with the participant (and any representative) and with the Regional Office representative, in "separate sessions." In each of the separate sessions, the moderator may explain and discuss the law, regulations, and

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policies that apply to the services requested, and may discuss whether he/she believes that the facts meet the criteria and why. The other person(s) will also discuss why they believe the facts do or do not meet the criteria, and why. The moderator may ask the parties to consider other facts or policies, but the final decision on whether there is any agreement belongs to the DDA and the participant, rather than the moderator. Each separate session is limited to 10 minutes.

Nothing that is discussed in the separate sessions is revealed to the other side without the expressed approval of the parties in that session. This allows all parties to be completely open with their comments and questions, without concern that the other party will hear those comments and questions. Also, during the CRC, DDA regional office representatives may call or consult with their supervisors at any time to discuss any issue, and the moderator may call any DDA staff for clarification of policy or other matter.

f. In the remaining time, the parties meet together, with the moderator, to discuss whether their positions have changed and, if so, whether there are any issues that can be resolved. If there is resolution of part or all of the disputes, the moderator reflects back the areas of agreement and documents them. The parties sign the agreement. The moderator does not sign the agreement, since it is solely between the parties.

CRCs are scheduled by DDA's Operations Office. The Department grants one CRC to occur before an individual's Medicaid Fair Hearing. CRCs usually occur at one of DDA Regional Offices or other locations within a region. The Office of Administrative Hearings (OAH) schedules Medicaid Fair Hearings based on requirements in COMAR 10.01.04. Medicaid Fair Hearings occur at the OAH locations or locations convenient for participants, per OAH permission.

### Appendix F-3: State Grievance/Complaint System

**a. Operation of Grievance/Complaint System.** *Select one:*

<input checked="" type="radio"/>	<b>No. This Appendix does not apply</b>
<input type="radio"/>	<b>Yes. The State operates a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under this waiver</b>

**b. Operational Responsibility.** Specify the State agency that is responsible for the operation of the grievance/complaint system:

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**c. Description of System.** Describe the grievance/complaint system, including: (a) the types of grievances/complaints that participants may register; (b) the process and timelines for addressing grievances/complaints; and, (c) the mechanisms that are used to resolve grievances/complaints. State laws, regulations, and policies referenced in the description are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

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